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April 28, 2008

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street S.W.  
Washington, DC 20554

Re: *In re Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, MB Dkt. No. 07-42

Dear Ms. Dortch,

On April 25, 2008, representatives of Comcast Corporation (“Comcast”) met separately with Rick Chessen, Senior Legal Advisor and Legal Advisor for Media Issues to Commissioner Michael J. Copps; Amy Blankenship, Legal Advisor to Commissioner Deborah Taylor Tate; Cristina Pauzé, Legal Advisor for Media Issues to Commissioner Robert M. McDowell; and Rudy Brioché, Legal Advisor for Media Issues to Commissioner Jonathan S. Adelstein regarding the above-captioned proceeding. Comcast was represented in these meetings by my colleague James R. Coltharp, James Casserly of Willkie Farr & Gallagher LLP, and me. During each of these conversations, Comcast’s representatives discussed efforts by certain parties to revive the program carriage rulemaking and made the following points.

First, subsequent events have borne out the wisdom of the Commissioners’ collective decision not to adopt changes to the program carriage rules last November. A number of independent programming networks have secured carriage agreements or renewals of carriage agreements through private marketplace negotiations and without additional governmental pressure.<sup>1</sup> And the NFL, bowing to intense public and political pressure, moved the December

<sup>1</sup> See, e.g., Press Release, Crown Media Holdings, *Crown Media Holdings Announces Renewal of Distribution Agreement with Comcast Corporation* (Nov. 29, 2007) (announcing renewal of distribution agreement for Hallmark Channel), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=103320&p=irol-newsArticle&ID=1082531&highlight=>; Anthony Crupi, *Comcast Renews With Hallmark Channel*, Media Week, Nov. 29, 2007 (renewal with Comcast described by Crown Media President and CEO Henry Schleiff as follows: “Our ability to reach a mutually satisfactory agreement should indicate that regardless of size or other factors, parties who operate in good faith can reach fair agreements without outside help or intervention”), available at [http://www.mediaweek.com/mw/news/recent\\_display.jsp?vnu\\_content\\_id=1003679177](http://www.mediaweek.com/mw/news/recent_display.jsp?vnu_content_id=1003679177); Press Release, Black Television News Channel, *Black Television News Channel Announces Carriage Agreement with Comcast* (Apr. 14, 2008), available at <http://www.btnc.tv/node/2>; Press Release, RFD-TV LLC, *Comcast Inks RFD-TV/RFD HD* (Jan. 31, 2008), available at <http://www.rfdtv.com/Press Releases/HTML/Comcast.asp>; see also Mike Farrell, *Hallmark Reaches Renewal Deal With DirecTV; Schleiff: Pact Completes “Hat-Trick”*, Multichannel News, Mar. 5, 2008

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29 game between the New England Patriots and the New York Giants off of the NFL Network and onto free over-the air television, where all football fans could see it regardless of whether they subscribe to a multichannel video programming service (or, if they do, which providers and which tiers of service they choose to purchase).<sup>2</sup>

Second, WealthTV's proposed change in the definition of a *prima facie* case should not be adopted.<sup>3</sup> The Commission's 1993 program carriage order properly determined that, in program carriage complaints, the staff would determine after reviewing the complaint, answer, and reply, whether to dismiss the complaint or whether to initiate further inquiries.<sup>4</sup> Thus, under existing rules, where an answer demonstrates a fatal flaw in the complaint that is not apparent on the face of the complaint, the staff's responsibility is to dismiss it. WealthTV's approach, however, is calculated to allow such a complaint to go forward whenever the complaint -- on its face -- is sufficient to withstand a motion to dismiss in federal district court, no matter how compelling the response to the complaint is. This would needlessly encourage, and prolong, baseless program carriage complaint proceedings.

Finally, although no changes in procedures should be adopted, any procedural changes that are adopted should not apply to pending proceedings. Elementary considerations of fairness dictate that the rules should not be changed for a proceeding that is underway.

Please contact me with any questions about this submission.

Respectfully submitted,

/s/ Kathryn A. Zachem  
Kathryn A. Zachem

ccs: Amy Blankenship  
Rudy Brioche  
Rick Chessen  
Cristina Pauze

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(announcing Hallmark's multi-year carriage deal with DIRECTV), available at <http://www.multichannel.com/article/CA6538164.html>; Anthony Crupi, *Hallmark Reups With Time Warner Cable*, MediaWeek, Feb. 21, 2008 (renewal with Time Warner described by Schleiff as "a sign of our mutual respect and desire to provide quality, fair price and service to our subscribers"), available at [http://www.mediaweek.com/mw/news/recent\\_display.jsp?vnu\\_content\\_id=1003713796](http://www.mediaweek.com/mw/news/recent_display.jsp?vnu_content_id=1003713796).

<sup>2</sup> See Press Release, National Football League, *NFL Allows Simulcast of Pats-Giants on NFL Network, CBS and NBC* (Dec. 26, 2007), available at <http://www.nfl.com/news/story?id=09000d5d805793b5&template=with-video&confirm=true>.

<sup>3</sup> See Ex Parte Letter from Kathleen Wallman, Counsel to WealthTV, to Marlene H. Dortch, Secretary, FCC, MB Dkt. No. 07-42, at 2 (Apr. 23, 2008).

<sup>4</sup> See *In re Implementation of Sections 12 and 19 of the Cable Television Consumer Protection & Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report & Order, 9 FCC Rcd. 2642 ¶ 31 (1993) ("After reviewing the complaint, answer and reply, the staff will make what, for the purposes of these proceedings, we will deem a *prima facie* determination.").